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May 19, 2011

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Corbin Davis
Clerk of the Court
Michigan Supreme Court
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Lansing, MI 48909

306 Townsend Street

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Lansing, MI

48933-2012

RE: ADM File No. 2010-17 – Proposed Amendment of Rule 3.707 of the Michigan Court Rules

Dear Clerk Davis:

At its May 10, 2011 meeting, the Executive Committee of the State Bar of Michigan considered the above rule amendment published for comment. In its review, the Executive Committee considered recommendations from the Domestic Violence Committee and the Criminal Jurisprudence & Practice Committee. The Executive Committee voted to support the proposed amendment and to authorize the Criminal Jurisprudence and Practice Committee to provide additional commentary to the Court.

The Executive Committee's support for the proposal was based in a large part on the rationale provided by the Domestic Violence Committee:

This proposal would amend MCR 3.707 to provide that a respondent may file a motion to modify or terminate an ex parte PPO within 14 days of service. The amendment would change the current rule, which permits a respondent to file such a motion regardless of whether the PPO was entered ex parte or after a hearing.

The proposal is designed to fix a situation that occurred in *Gupton v Johnson*, (unpublished COA No. 288847, 1/29/2010), where a PPO was entered after a hearing at which respondent had notice and an opportunity to be heard. Following the hearing, respondent filed a motion to terminate the order and under the current reading of the statute, the court held this was proper.

This amendment is necessary because many courts issue PPOs after a hearing, rather than ex parte, and permitting a second hearing on the same issues is frivolous, duplicative and vexatious. Such hearings are problematic for domestic violence survivors who are forced to needlessly face the abuser and again defend the PPO.

Further, other remedies exist for respondents who believe the PPO should be terminated:

If respondent believes a PPO was issued in error after a hearing, respondent's remedy is to file an appeal with the Court of Appeals, not a motion to terminate.

If during the course of a PPO respondent believes petitioner is acting inconsistent with the order, if the facts support it respondent's remedy to petition for a PPO, not file a motion to terminate the PPO. If the PPO conflicts with a later custody order, the current rules already provide that the judges are to communicate and that the PPO takes precedence.

Finally, the purpose of a PPO is to protect a named party from the harmful acts of another. Once the court makes a determination following a hearing that a PPO is appropriate, the order should continue until the court-identified expiration date or until the protected party, with the court's concurrence, believes it is no longer necessary.

We thank the Court for its publication of the proposed amendment. Please contact me with any further questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janet Welch".

Janet Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
W. Anthony Jenkins, President
Hon. Terry L. Clark, President, Michigan District Judges Association
Hon. Annette M. Jurkiewicz-Berry, President, Michigan Judges Association
Hon. John A. Hohman, Jr., Chair, Judicial Conference
Hon. Kenneth L. Tacoma, President, Michigan Probate Judges Association